IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 24565 of 2006(Y)

PETITIONER:

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1. MATHAICHAN MATHEW, S/O.MATHEW,
   MADAPPALLY MATTATHIL,MOZHOOR P.O.,KUTTICKAL,
   KANJIRAPALLY,KOTTAYAM,NOW R/AT JUBILE,SAUDI ARABIA
   REP.BY HIS POWER OF ATTORNEY HOLDER,ZAKARIA MATHEW
   SENZO ENGINEERING (PVT) LTD.,302-A,EVENING STAR,
   REHEJA VIHAR COMPLEX, ANDHERI EAST, MUMBAI.

2. ZAKARIA MATHEW,
   SENZO ENGINEERING (PVT) LTD., 302-A,
   EVENING STAR, REHEJA VIHAR COMPLEX, ANDHERI EAST,
   MUMBAI.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS:

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1. SECRETARY,
   HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
   THIRUVANANTHAPURAM.

3. N. RAMACHANDRAN,
   DEPUTY SUPERINTENDENT OF POLICE,
   ADMINISTRATION, KOTTAYAM.

4. CENTRAL BUREAU OF INVESTIGATION,
   NEW DELHI, REPRESENTED BY THE SUPERINTENDENT OF
   POLICE, KATHRUKKADAVU, KOCHI-17.

R4BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
R1 TO R3 BY GOVT.PLEADER SRI K.C.SANTHOSH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON ON 06/10/2006, THE COURT ON 6-12-2006, DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

W.P.C.NO.24565 OF 2006

DATED THIS THE 6TH DAY OF NOVEMBER 2006

JUDGMENT

The petitioners who are the de facto complainants in Crime No.96/2003 of Kanjirappally police station and Crime No.73/2002 of Gandhi Nagar police station which are right now investigated by a special investigation team constituted as per the order of this Court in W.P.C.No.31824/2004 dated 17-6-2005 with respect to the offences under Sections 419, 468, 471 and 420 in Crime No.96/2003 and under Sections 403 and 406 vide Crime No.73/2002 have sought for handing over the investigation to the C.B.I. as according to the petitioners, the investigation being conducted by the special investigation team has not been effective so far and further the accused has forged the signature of the first petitioner and the seal and signature of Attachee, Embassy of India, Riyad that make the investigation of the case more complex and warrant travel and inquiries outside India.

2. It is submitted that the first petitioner is working in Saudi Arabia with family and the second petitioner, who is the Managing Director of Senzo Engineering (Pvt)Ltd, is conducting business in

Mumbai. The petitioners and the accused are brothers. It is the case of the first petitioner that the accused, who is his younger brother, did steal the sale deed of the property extending 4 acres and 4 cents owned by the first petitioner and got the property mortgaged with the Meenachil Co-Operative Agricultural Bank Ltd. Palai, Kottayam and raised an amount of loan of Rs.6,49,200/- practicing impersonation and a colluding with the Bank officials. It can be found from the statement of the authorities of the Bank that the first petitioner was admitted to the membership of the Bank on his application whereas the first petitioner had never applied and at the relevant time he was abroad which could be seen from his passport, a copy of which he has produced as Ext.P2. Further the accused has opened an S.B.account with the S.B.T.Poovathilappu Branch in the name of the petitioner but without his knowledge wherein the accused is mentioned as the introducer. The accused got the L.I.C.policy amount of the first petitioner, i.e. a sum of R.74,963/- credited to the above account and withdrawn the same which has been done in collusion with the above Bank officials and the L.I.C.authorities. Further a sum of Rs.17,860/- towards subsidy by the Commissioner, Rubber Board allegedly disbursed to the first petitioner was got encashed with the support of the Rubber Board officials. The first

petitioner had submitted a complaint in this regard before the Director General of Police/2nd respondent vide Ext.P7. As nothing effective could be accomplished from the same, he approached this Court vide W.P.C.No.31824/2004 and the court vide Ext.P8 directed the Special investigation team to be constituted.

3. The second petitioner had started an industrial unit at Kottayam and entrusted the same to the accused for management. The 2nd petitioner had opened the account with Union Bank of India, Nagampadam Branch, Ktottayam and entrusted six signed blank cheque leaves with his brother/accused. The accused misused the same and encashed Rs.45,000/- in the name of the accused and Rs.six lakhs in the name of one Joshy Thomas and Rs. four lakhs in the name of one K.C.Chandrasekhara Panicker. The 2nd petitioner lodged a complaint and the crime registered as 73/2002. Subsequently as per the order of this Court in W.P.C. No.7168/2006, this Court directed the above crime 73/2002 of Gandhi Nagar police station also to be investigated by the special investigation team vide order dated 22-3-2006.

4. According to the petitioners, there was no breakthrough in the investigation. While so, a petition allegedly written by the first petitioner and attested by the Embassy of India at Riyad was sent to

the 2nd respondent/Director General of Police informing that all the allegations are withdrawn against the accused and the Manager, Popovathilappu Branch of Sate Bank of Travancore and the complaint was sought to be treated as compromised, compounded and withdrawn. The power of attorney holder of the first petitioner was also instructed to withdraw O.S.No.215/2002 filed by the first petitioner. Copy of the above petition sent to the Director General of Police is produced as Ext.P15. The entire documents are forged, the seal and signature of Attachee, Embassy of India, Riyad is also forged. On coming to know Ext.P15, the first petitioner addressed the Embassy of India for the issuance of a cancellation letter, a copy of which is produced as Ext.P15 dated 2-3-2006. The petitioner has also sent letter to the second respondent/Director General of Police, a copy of which is produced as Ext.P17. Meanwhile the Bank Manager, State Bank of Travancore, Poovathilappu Branch has sent a letter to the first petitioner thanking him for withdrawing the proceedings, a copy of which is produced as Ext.P18. It is in the circumstances and in view of the forging of the seal and signature of the Attachee, Embassy of India, Riyad that the investigation is sought to be entrusted with the Central Bureau of Investigation.

5. The C.D.was produced as directed by this Court. The Director

General of Police and the standing counsel for the C.B.I.were heard. Both the Director General of Police and the standing counsel for the C.B.I.have not opposed the petition.

In the circumstances and on considering the case diary and in view of the fact that the investigation will have to be conducted outside India as well, I find that it would be appropriate to entrust the matter with an agency which is having the necessary infrastructure and facilities to conduct such an investigation. Hence, it is directed that the present investigating team would handover the entire case records with all materials collected so far to the C.B.I. who shall take necessary steps to conduct further investigation. Records shall be transmitted as expeditiously as possible. The writ petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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